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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. R. BANUMATHI

HABEAS CORPUS PETITION NO.62 OF 2007

P. Valli
W/o. Purushothaman .. Petitioner

Vs.

1. The District Magistrate &
District Collector,
Kancheepuram,
Kancheepuram District.

2. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus calling for the records of the first respondent setting aside the order of detention passed on 2.11.06 in No60/BDFGISSV/2006 and produce the detenu by name Purushothaman before this Court and set the detenu at liberty, now detained in Central Prison, Chennai.

For Petitioner : Mr. Arasuganesan

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

P.K. MISRA, J

The wife of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 2.11.2006 passed by the Commissioner of Police, Chennai City, under Section 3(1) read with 3(2) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act,1982 (Tamil Nadu Act 14 of 1982), hereinafter referred to as “the Act”.

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2. The detenu came to the adverse notice of the police in four adverse cases. First adverse case relates to Chunambedu Police Station Cr.No.517/1995 for an offence under Section 324 IPC, which is pending trial, second adverse case is Chunambedu Police Station Cr.No.234/2001 for the offence registered under Sections 147, 148, 341, 302 IPC r/w.149 IPC., third adverse case is Chunambedu Police Station Cr.No.191/2003 for the offence registered under Sections 147, 148, 341, 427, 307 IPC r/w.3(1) TNPPD Act and the fourth adverse case is Chunambedu Police Station Cr.No.257/2003 for the offence registered under Sections 147, 148, 326, 307, 302 IPC. The occurrence relating to ground case, on the basis of which the order of detention has been passed, allegedly took place on 27.8.2006. Ground case has been registered under Sections 147, 149, 307 IPC read with Sections 3 & 5 of the Indian Explosive Substances Act, 1908. The detenu was arrested on 20.10.2006. In the aforesaid background, the detaining authority came to the conclusion that detenu was a Goonda within the meaning of the Act and it was necessary to detain him to prevent him from acting in a manner prejudicial to the maintenance of public order. The detaining authority concluded :-

> "5(i) I am aware that Thiru Purushothaman is in remand in Chunambedu Police Station Cr.No.372/2006 and has not move any bail application. I am also aware that there is a real possibility of his coming out on bail by filing a bail application before the same or Higher Court since in similar cases bails are granted by the concerned Court or Higher Court after lapse of time. If he comes out on bail he will indulge in future activities which will be prejudicial to the maintenance of Public Order."

Similarly in paragraph 5(ii) it was indicated :-

> "5(ii) I am aware that Thiru Purushothaman was arrested on 20.10.2006 by the Inspector of Police, Chunambedu Police Station and he was produced before the Judicial Magistrate upto 04.11.2006 and lodged at Central Prison, Chennai as a remand prisoner. He has not moved any bail petition so far. But I am aware that there is a real possibility of his coming out on bail by filing a bail application before the same or higher court. I am also aware that in such cases bail is granted after a lapse of time and if the detenu is let to remain at large, he is likely to indulge in such further prejudicial activities in future as well and therefore there is a compelling necessity to pass this order of detention with a view to prevent him from indulging in such prejudicial activities in future."

3. Learned counsel appearing for the petitioner, while assailing such order of preventive detention, has contended that the detaining authority has come to the conclusion that the detenu is likely to be released on bail without any cogent material and on the basis of mere ipse dixit of the detaining authority. It has been further submitted that the conclusion of the detaining authority that "I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Courts or High Court." is the mere ipse dixit of

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the detaining authority without any material on record and more particularly keeping in view the nature of allegations and the fact that investigation was still in progress and even there was no reasonable possibility of obtaining statutory bail contemplated under Section 167(2) proviso of Cr.P.C. as the period stipulated for completion of the investigation was far remote. In this connection, learned counsel appearing for the petitioner has invited our attention to several decisions of the Supreme Court as well as the Full Bench and other Division Bench decisions of this Court in A.I.R. 1964 S.C.334 (Rameshwar Shaw v. District Magistrate, Burdwan), (1986)4 S.C.C. 416 (Binod Singh v. District Magistrate, Dhanabad) ,(2002)7 S.C.C. 129 (Rajesh Gulati v. Government of NCT of Delhi) (2006)1 M.L.J.(Crl.) 539 (T.V. SARAVANAN alias S.A.R. PRASANNA VENKATACHARIAR CHATURVEDI v. STATE, THROUGH SECRETARY AND ANOTHER),(2006) 9 SCC 711 (A. SHANTHI (SMT) v. GOVERNMENT OF TAMIL NADU AND OTHERS) and the Full Bench decision in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALI AND ANOTHER) and also the Division Bench decisions of this Court including the HCP.No.1303 of 2006 disposed of on 27.6.2007, HCP.Nos.46, 52, 74, 79 and 131 of 2007 date 19.6.2007.

4. Legality of the conclusion of the detaining authority is required to be examined in the light of the decisions of the Supreme Court as well as the Full bench decision of this Court and several other unreported decisions noticed above.

5. It is important to note that detenu was allegedly involved in four other adverse cases out of which in two of the adverse cases, offence under Section 302 IPC has been committed. Even though from the grounds of detention or other materials on record it is not so apparent, it is obvious that the detenu had been released on bail in all those four pending matters including two cases wherein offence under Section 302 IPC had been allegedly committed. There cannot be any dispute that while considering the question of bail, a Court is ordinarily required to consider the background as well as the antecedents of the petitioner and if it is found that a person is a hardened criminal, the Court is always loath to grant bail. Therefore, the bald conclusion of the detaining authority that there was real possibility of the detenu coming out on bail since ".... in such cases bail is granted after a lapse of time" cannot be described anything, but mere ipse dixit of the detaining authority. It is of course true that in the ground case the alleged offence was under Sections 147, 148, 307 IPC read with Sections 3 & 5 of the Indian Explosive Substances Act, which may not appear to be as serious as offence under Section 302 IPC. Yet, it is difficult to accept the mere ipse dixit of the detaining authority that the detenu was likely to be released on bail after lapse of sometime. Of course where the chargesheet is not filed within the stipulated period of 60 days or 90 days, as the case may be, the accused in custody has right to be enlarged on bail notwithstanding seriousness of the allegations and notwithstanding the fact that he could have been involved in some other offence. In the present case, that facility was not available inasmuch as the detenu was taken into custody in connection with the ground case only on 20.10.2006 and the order of detention came to be passed on 2.11.2006, after a lapse of 12 days. The statutory period available for filing chargesheet was

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still long way off and, therefore, it cannot be visualised that there was imminent possibility of the detenu being enlarged on bail by availing the provision contained in Section 167(2) of the Code of Criminal Procedure.

6. Keeping in view these aspects, in our considered opinion, conclusion of the detaining authority that there was real possibility of the detenu being released on bail, even though a bail application was yet to be filed, appears to be the mere ipse dixit of the detaining authority and there is no material far less any cogent material in support of such conclusion.

7. Learned counsel for the respondents has placed strong reliance upon the decisions of the Supreme Court reported in (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), (2006) 3 SCC (Cri) 50 (SENTHAMIL SELVI v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER).

8. In (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), the detention was under COFEPOSA Act. The only contention was to the effect that the High Court was not justified in upholding the conclusion of the detaining authority regarding imminent possibility of the detenu coming out on bail, more particularly when the detenu had not filed any bail application after withdrawal of the first bail application. The Supreme Court observed:-

> "7. It has to be noted that whether prayer for bail would be accepted depends on the circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on Rajesh Gulati v. Govt. of NCT of Delhi. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant." (Emphasis added)

9. In (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER), the detenu was detained under Section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982, on the allegation that detenu was indulging in immoral

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trafficking. In the appeal, conclusion about the imminent possibility of being released on bail was under challenge. The Supreme Court made similar observations :-

> "10. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on Rajesh Gulati v. Govt. of NCT of Delhi. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant. (See Ibrahim Nazeer v. State of T.N. And Sethamilselvi v. State of T.N.)"

10. Similar observations had also been made in (2006) 3 SCC (Cri)50 (SENTHAMILSELVI v. STATE OF TAMIL NADU AND ANOTHER).

11. A careful reading of these decisions indicates that conclusion of the detaining authority regarding imminent possibility of being released on bail was based on materials and as such was not liable to be interfered with as conclusion of the detaining authority on the basis of materials on record regarding imminent possibility of coming out on bail should not be interfered with. At the same time, the Supreme Court emphasised that such conclusion should not be based on the mere ipse dixit of the detaining authority, but on the other hand should be based on materials on record. As a matter of fact, in all these three cases, the detaining authority had come to the conclusion that in similar cases orders granting bail are passed by various courts and the Supreme Court observed that the appellant "had not disputed" the correctness of such statement. In other words, it is very much clear that the appellant in those cases had not disputed the correctness of the statement that in similar cases bail orders are granted. As a matter of fact, keeping in view the nature of offence in the first two cases noticed by us, one under the Customs Act and the other under Prevention of Immoral Traffic Act, it can be readily concluded that grant of bail is the rule rather than the exception and obviously that is the reason why the appellant had not disputed the correctness of the statement that in similar cases bail orders are granted by the courts.

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12. We are unable to persuade ourselves to come to the conclusion that the Supreme Court in the above three decisions intended to depart from the well settled principle of law recognized by series of decisions, which have already been noticed. However, on the peculiar facts situation, the Supreme Court had concluded that conclusion of the detaining authority regarding possibility of being released on bail was based on materials on record and, therefore, not to be interfered with.

13. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the detention order is quashed and the detenu is set at liberty forthwith unless his presence is required in connection with any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Magistrate &
   District Collector,
   Kancheepuram,
   Kancheepuram District.

2. The Secretary to Government,
   Prohibition & Excise Department,
   Secretariat, Chennai 600 009.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent, Central Prison,
   Puzhal Chennai.

5. The Joint Secretary to Government,
   Public (Law & Order),
   Fort St.George, Chennai-9.

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